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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,282	03/25/2004	David P. Fierek	1191.1101101	2176
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CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420			EXAMINER REYNOLDS, STEVEN ALAN	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 01/09/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/811,282

Applicant(s)

FIEREK, DAVID P.

Examiner

Steven Reynolds

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-19, 21-33 and 35-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-19, 21-33 and 35-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the amendment filed on 9/4/2007, wherein claims 1, 16 and 28 were amended. Claims 7, 20, 40 and 41 were cancelled. Claims 1-6, 8-19 and 21-39 are pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Upchurch et al. (US 6,962,257). Upchurch discloses an apparatus capable of being a bucket tool organizer, comprising a tool insert situated within the interior of a container (tank 152 – can be small in size as the filter 10 can be small enough to be manually inserted into the tank) having an upper end, an opening near the upper end, a closed lower end, and a side wall, said tool insert including a holster (10) substantially spanning the opening having a shape capable of tightly receiving an object therein, the shape being bounded by first and second side panels (88 and 90), first and second end panels (84 and 86), and a bottom panel (92), the holster having an upper end recessed

from the upper end of the container, wherein the holster is formed from a fabric or cloth material (woven cloth); the holster has a contoured shape corresponding in size and shape with an object; situated near the centroid of the container; an eyelet (small openings in the filter) disposed through the bottom panel; and is removably situated within the interior of the container.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 9, 16, 17, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upchurch et al. (US 6,962,257), as applied to claims 1, 3, 5 and 6 above, in view of Yonkman et al. (US 4,865,282). As described above, Upchurch discloses the claimed invention except for the fastening means. However, Yonkman teaches fastening means (clips 14 and 16) for the purpose of securely hanging the

insert/filter in a vertical orientation on the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of Upchurch with clips as taught by Yonkman in order to more securely hold the insert on the container.

7. Claims 10-15, 28, 29, 31, 32 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upchurch et al. (US 6,962,257), as applied to claims 1, 3, 5 and 6 above, in view of Lindsay (US 4,993,551). Regarding claims 10, 28, 29, 31 and 32; as described above, Upchurch discloses the claimed invention except for the tool carrier. However, Lindsay teaches a container (12) including a container mounted tool carrier (10) for the purpose of conveniently holding and carrying tools on a container. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the tank of Upchurch with a tool carrier as taught by Lindsay in order to conveniently hold tools on the sides of the tank for easier access.

Further regarding claims 11-15, 28 and 37-39, Upchurch-Lindsay discloses the bucket mounted tool carrier includes a cylindrically shaped interior panel member configured to drape over said open end and extend into the interior of the container, and an exterior panel member configured to drape over the exterior of the container; the exterior panel member includes a slotted section (28); the interior panel member includes a pleated section (26); the tool insert is fixedly secured to the bucket mounted tool carrier; said object is capable of being a power tool.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Upchurch et al. (US 6,962,257) in view of Cote (US 5,759,388). As described above, Upchurch discloses the claimed invention except for the necked-down region. However, Cote teaches a debris filter having tapered (necked-down) side walls for the purpose of preventing the escape of debris from the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of Upchurch to have a tapered bottom as taught by Cote in order to better prevent debris from escaping the filter.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Upchurch et al. (US 6,962,257) in view of Kirchoff (US 6,132,604). As described above, Upchurch discloses the claimed invention except for the pocket attached to a side panel. However, Kirchoff teaches a debris filter (17) including a pocket (27) attached to a side wall for the purpose of removing debris from a larger area. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of Upchurch with a pocket extending from a side panel as taught by Kirchoff in order to filter debris from a larger area.

10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Upchurch et al. (US 6,962,257) in view of Yonkman et al. (US 4,865,282), as applied to claim 16 above, in further view of Cote (US 5,759,388). As described above, Upchurch-Yonkman discloses the claimed invention except for the necked-down region. However,

Cote teaches a debris filter having tapered (necked-down) side walls for the purpose of preventing the escape of debris from the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of Upchurch-Yonkman to have a tapered bottom as taught by Cote in order to better prevent debris from escaping the filter.

11. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Upchurch et al. (US 6,962,257) in view of Yonkman et al. (US 4,865,282), as applied to claim 16 above, in further view of Kirchoff (US 6,132,604). As described above, Upchurch-Yonkman discloses the claimed invention except for the pocket attached to a side panel. However, Kirchoff teaches a debris filter (17) including a pocket (27) attached to a side wall for the purpose of removing debris from a larger area. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of Upchurch-Yonkman with a pocket extending from a side panel as taught by Kirchoff in order to filter debris from a larger area.

12. Claims 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upchurch et al. (US 6,962,257) in view of Yonkman et al. (US 4,865,282), as applied to claim 16 above, in further view of Lindsay (US 4,993,551). As described above, Upchurch-Yonkman discloses the claimed invention except for the mounted tool carrier. However, Lindsay teaches a container (12) including a container mounted tool carrier (10) for the purpose of conveniently holding and carrying tools on a container (bucket).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the tank of Upchurch-Yonkman with a tool carrier as taught by Lindsay in order to conveniently hold tools on the sides of the tank for easier access.

Further regarding claims 24-27, Upchurch-Yonkman-Lindsay discloses the bucket mounted tool carrier includes a cylindrically shaped interior panel member configured to drape over said open end and extend into the interior of the container, and an exterior panel member configured to drape over the exterior of the container; the exterior panel member includes a slotted section; the interior panel member includes a pleated section; the tool insert is fixedly secured to the bucket mounted tool carrier; said object is capable of being a power tool.

13. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Upchurch et al. (US 6,962,257) in view of Lindsay (US 4,993,551) as applied to claim 28, in further view of Cote (US 5,759,388). As described above, Upchurch-Lindsay discloses the claimed invention except for the necked-down region. However, Cote teaches a debris filter having tapered (necked-down) side walls for the purpose of preventing the escape of debris from the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of Upchurch-Lindsay to have a tapered bottom as taught by Cote in order to better prevent debris from escaping the filter.

14. Claims 33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Upchurch et al. (US 6,962,257) in view of Lindsay (US 4,993,551) as applied to claim 28, in further view of Yonkman et al. (US 4,865,282). As described above, Upchurch-Lindsay discloses the claimed invention except for fixing means. However, Yonkman teaches fastening means (clips 14 and 16) for the purpose of securely hanging the insert in a vertical orientation on the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of Upchurch-Lindsay with clips as taught by Yonkman in order to more securely hold the insert on the container, which would be held onto the mounted tool carrier which is resting on the container.

15. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Upchurch et al. (US 6,962,257) in view of Lindsay (US 4,993,551) as applied to claim 28, in further view of Kirchoff (US 6,132,604). As described above, Upchurch-Lindsay discloses the claimed invention except for the pocket attached to a side panel. However, Kirchoff teaches a debris filter (17) including a pocket (27) attached to a side wall for the purpose of removing debris from a larger area. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the device of Upchurch-Lindsay with a pocket extending from a side panel as taught by Kirchoff in order to filter debris from a larger area.

Response to Arguments

16. Applicant's arguments with respect to claims 1-41 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Reynolds whose telephone number is (571) 272-9959. The examiner can normally be reached on Monday-Friday 9:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SR
1/7/08


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